

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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CXA-10 CORPORATION,

Plaintiff,

v.

BARRY A. FORD,

Defendant.

Case No. 2:12-cv-01554-JCM-PAL

ORDER

Before the court is Plaintiff's Emergency Motion to Strike Defendant's Motion for Summary Judgment on the Determination of Any Deficiency (Dkt. #91). The court has considered the motion, the Affidavit of Brian Reeve, Esq. in Support (Dkt. #90) and Opposition to Plaintiff's Emergency Motion to Strike (Dkt. #91).

Plaintiff seeks to strike Defendant's Motion for Summary Judgment on the Determination of Any Deficiency (Dkt. #88) which was filed June 23, 2014 more than a year after the May 4, 2013 deadline established by the court's discovery plan and scheduling order. The motion was filed on an emergency basis so that Plaintiff could avoid the necessity of responding to the motion for summary judgment on or before July 17, 2014. Plaintiff argues that the motion for summary judgment is untimely and that Plaintiff cannot establish good cause under Fed. R. Civ. P. 16(b) or excusable neglect under LR 26-4 for filing a dispositive motion after the expiration of the deadline. If the court is not inclined to strike the motion for summary judgment, Plaintiff requests twenty one (21) days from entry of an order deciding the motion to strike in which to file a response and supporting evidence in opposition to the motion for summary judgment.

Defendant's Opposition points out that the district judge issued his ruling on Plaintiff's motion for summary judgment on February 14, 2014. Defendant filed a Motion To Clarify Or

1 Alternatively Amend The Judgment Concerning The District Judge's Order (Dkt. #82) on
2 February 12, 2014 which is fully briefed but has not yet been decided. After the motion to
3 clarify was filed several recent rulings by the Nevada Supreme Court and U.S. District Courts
4 have addressed similar factual issues and legal interpretations of N.R.S. 40.459 which did not
5 exist at the time the motion to clarify was filed. Defendant asserts the motion for summary
6 judgment was filed to simplify the legal and factual issues to be presented at trial, and allowing
7 the motion is within the court's discretion. Defendant does not oppose Plaintiff's request for
8 twenty one (21) days from the decision of this motion to strike in which to file a response.

9 The court has reviewed the moving and responsive papers, including the late filed motion
10 for summary judgment. The motion for summary judgment provides the court with a 2013
11 decision of the Nevada Supreme Court regarding the prospective application of N.R.S.
12 40.459(1)(c), and additional district court decisions in this district on similar legal issues.

13 Having reviewed and considered the matter,

14 **IT IS ORDERED:**

15 1. Plaintiff's Emergency Motion to Strike Defendant's Motion for Summary
16 Judgment on the Determination of Any Deficiencies (Dkt. #89) is DENIED.

17 2. Plaintiff's Request for Alternative Relief (Dkt. #82) is GRANTED and Plaintiff
18 shall have until **August 4, 2014** within which to file a response to the motion for summary
19 judgment.

20 Dated this 15th day of July, 2014.

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22 PEGGY A. LEEN
23 UNITED STATES MAGISTRATE JUDGE
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